

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
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2005 JAN 19 P 3:11

TRUSTEES OF THE PAINTERS & ALLIED  
TRADES DISTRICT COUNCIL NO. 35  
HEALTH AND WELFARE, PENSION AND  
ANNUITY FUNDS

Plaintiffs

v.

Decor Graphics, Inc.

Defendant

and

Enfield Enterprises, Inc.

Reach and Apply Defendant

and

The Stop & Shop Companies, Inc.

Reach and Apply Defendant

and

Kay Construction Corp.

Reach and Apply Defendant

U.S. DISTRICT COURT  
DISTRICT OF MASS.  
05-10124 MLW

RECEIPT # 61558  
AMOUNT \$ 150.00  
SUMMONS ISSUED 4  
LOCAL RULE 4.1 -  
WAIVER FORM -  
MCF ISSUED -  
BY DPTY. CLK. M.P.  
DATE 1/30/05

Civil Action No.

MAGISTRATE JUDGE JGD

**COMPLAINT**

COUNT I

1. This is an action under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001, et seq., brought by the Trustees of the Painters & Allied Trades District Council No. 35 Health and Welfare, Pension and Annuity Funds ("Funds" or

"Plaintiff Funds") for damages and injunctive relief arising from unpaid and delinquent contributions.

2. This Court has jurisdiction pursuant to 29 U.S.C. §1132(e) (1) and venue lies in this district pursuant to 29 U.S.C. §1132(e) (2).

3. Each of the Plaintiff Funds is a "multi-employer plan" within the meaning of Section 3(37) (A) of ERISA, 29 U.S.C. §1002(37) (A), and is an "employee benefit plan" or "plan" within the meaning of Section 3(3) of ERISA, 29 U.S.C., §1002(3). The Plaintiff Funds have a principal office at and are administered from 25 Colgate Road, Roslindale, MA.

4. Defendant Decor Graphics, Inc. ("Decor Graphics") is an "employer" within the meaning of 29 U.S.C. §1002(5) and an employer in an industry affecting commerce within the meaning of 29 U.S.C. §152(2) and (6) and has a principal place of business at 102 Main Street, Reading, MA 01867.

5. Painters & Allied Trades District Council No. 35 ("Painters Union") is a "labor organization" within the meaning of 29 U.S.C. §152(5).

6. At all material times, Defendant was obligated by the terms the collective bargaining agreement between it and the Painters Union and by the terms of the Agreements and Declarations of Trust for each of the Plaintiff Funds to make contributions and remittance reports on behalf of its employees represented by the Painters Union to the Plaintiff Funds.

7. Defendant has failed to make required contributions in the approximate sum \$100,000.00 for the months of October, November and December 2004 in violation of Section 515 of ERISA, 29 U.S.C. §1145.

COUNT II AS AGAINST REACH AND APPLY DEFENDANT  
ENFIELD ENTERPRISES, INC.

8. Plaintiff Funds hereby sets forth and incorporates by reference Paragraphs 1 through 7 of this Complaint.

9. Enfield Enterprises, Inc. is a duly organized business corporation with a place of business at 551 East Columbus Avenue, Springfield, MA 01105.

10. Upon information and belief, Defendant Decor Graphics entered into an agreement with Enfield Enterprises, Inc. to perform labor on the project known as Natick Army Base, Natick, MA.

11. Pursuant to its contract with Decor Graphics, Reach and Apply Defendant Enfield Enterprises, Inc. is obligated to make periodic payments to Defendant Decor Graphics for work performed by Defendant Decor Graphics on the project named in Paragraph 10 of this Complaint.

12. Upon information and belief, Enfield Enterprises, Inc. is making periodic payments to Decor Graphics for work performed on the project named in Paragraph 10 of this Complaint.

13. Plaintiff Funds believe and therefore avers that unless they can reach the funds from Reach and Apply Defendant Enfield Enterprises, Inc., they will be irreparably harmed because if Enfield Enterprises, Inc. pays the funds over to Decor Graphics, the Plaintiff Funds will be unable to recover the contributions owed by Decor Graphics.

14. Plaintiff Funds have no knowledge of any real estate or other assets of Defendant Decor Graphics that can be reached by Plaintiff Funds.

COUNT III AS AGAINST REACH AND APPLY DEFENDANT  
THE STOP & SHOP COMPANIES, INC.

15. Plaintiff Funds hereby sets forth and incorporates by reference Paragraphs 1 through 7 of this Complaint.

16. The Stop & Shop Companies, Inc. is a duly organized Massachusetts corporation doing business at 1385 Hancock Street, Quincy, MA 02169.

17. Upon information and belief, Defendant Decor Graphics entered into an agreement with The Stop & Shop Companies, Inc. to perform labor at its store in Pembroke, MA.

18. Pursuant to its contract with Decor Graphics, Reach and Apply Defendant The Stop & Shop Companies, Inc. is obligated to make periodic payments to Defendant Decor Graphics for work performed by Defendant Decor Graphics on the project named in Paragraph 17 of this Complaint.

19. Upon information and belief, The Stop & Shop Companies, Inc. is making periodic payments to Decor Graphics for work performed on the project named in Paragraph 17 of this Complaint.

20. Plaintiff Funds believe and therefore aver that unless they can reach the funds from Reach and Apply Defendant The Stop & Shop Companies, Inc., they will be irreparably harmed because if The Stop & Shop Companies, Inc. pays the funds over to Decor Graphics, the Plaintiff Funds will be unable to recover the contributions owed by Decor Graphics.

21. Plaintiff Funds have no knowledge of any real estate or other assets of Defendant Decor Graphics that can be reached by Plaintiff Funds.

COUNT IV AS AGAINST REACH AND APPLY DEFENDANT  
KAY CONSTRUCTION CORP.

22. Plaintiff Funds hereby sets forth and incorporates by reference paragraphs 1 through 7 of this Complaint.

23. Kay Construction Corp. is a duly organized Massachusetts corporation with a usual place of business at 49 Winchester Street, Newton, MA 02461.

24. Upon information and belief, Defendant Decor Graphics entered into agreements with Kay Construction Corp. to perform labor on the project known as The Stop & Shop Companies, Inc. in Somerville, MA.

25. Pursuant to its contracts with Decor Graphics, Reach and Apply Defendant Kay Construction Corp. is obligated to make periodic payments to Defendant Decor Graphics for work performed by Defendant Decor Graphics on the project named in Paragraph 24 of this Complaint.

26. Upon information and belief, Kay Construction Corp. is making periodic payments to Decor Graphics for work performed on the project named in Paragraph 24 of this Complaint.

27. Plaintiff Funds believe and therefore aver that unless they can reach the funds from Reach and Apply Defendant Kay Construction Corp., they will be irreparably harmed because if Kay Construction Corp. pays the funds over to Decor Graphics, the Plaintiff Funds will be unable to recover the contributions owed by Decor Graphics.

28. Plaintiff Funds have no knowledge of any real estate or other assets of Defendant Decor Graphics that can be reached by Plaintiff Funds.

WHEREFORE, Plaintiff Funds demand that with respect to Defendant Decor Graphics judgment enter in accordance with Section 502(3) of ERISA, 29 U.S.C. §1132(g) (2) and request that the Court:

1. Determine and Award to the Plaintiff Funds the following amounts:
  - a. the Defendant's unpaid contributions;
  - b. interest on those contributions from the date the payment was due;
  - c. liquidated damages in an amount equal to the greater of interest on the unpaid contributions or 20% of the unpaid contributions;
  - d. all costs and reasonable attorney's fees incurred by the Plaintiff Funds in connection with this action; and
2. Permanently enjoin the Defendant from violating its obligations to make contributions and provide remittance reports to the Funds under the terms of its collective bargaining agreements with the Painters Union and the respective Agreements and Declarations of Trust; and
3. Order such other and further relief as this Court may deem just and proper.

WHEREFORE, Plaintiff Funds further demand that with respect to Reach and Apply Defendants Enfield Enterprises, Inc., The Stop & Shop Companies, Inc. and Kay Construction Corp.:

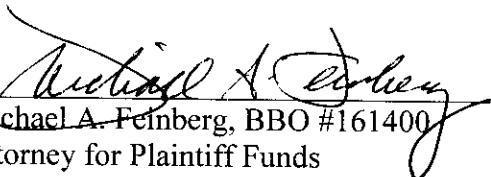
1. That Reach and Apply Defendants Enfield Enterprises, Inc., The Stop & Shop Companies, Inc. and Kay Construction Corp. be forthwith restrained and enjoined from transferring, alienating, or paying Defendant Decor Graphics, Inc. any sums owed by Reach and Apply Defendants Enfield Enterprises, Inc.,

The Stop & Shop Companies, Inc. and Kay Construction Corp. to Defendant Decor Graphics, Inc.;

2. That the Court permit the Plaintiff Funds to reach and apply the funds due or to be due from Reach and Apply Defendants Enfield Enterprises, Inc., The Stop & Shop Companies, Inc. and Kay Construction Corp. to Defendant Decor Graphics, Inc. to any judgment the Plaintiff recovers against Defendant Decor Graphics, Inc.; and
3. Order such other and further relief as this Court may deem just and proper.

Respectfully submitted,

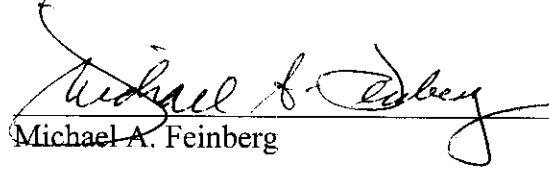
FEINBERG, CAMPBELL & ZACK, P.C.  
177 Milk Street  
Boston, MA 02109  
(617) 338-1976

  
Michael A. Feinberg, BBO #161400  
Attorney for Plaintiff Funds

Dated: January 18, 2005

CERTIFICATE OF SERVICE

I, Michael A. Feinberg, hereby certify that I caused a copy of the foregoing Complaint to be mailed on January 18, 2005 by certified mail, return receipt requested, to the United States Secretaries of Labor and Treasury.

  
Michael A. Feinberg



# CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1993, is to be used by the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Trustees of the Painters & Allied Trades District Council No. 35 Health and Welfare, Pension and Annuity Funds

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Suffolk  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Feinberg, Campbell & Zack, P.C.  
177 Milk Street  
Boston, MA 02109  
617-338-1976

## DEFENDANTS

Decor Graphics, Inc.

2005 JAN 19 P 3:12

U.S. DISTRICT COURT  
DISTRICT OF MASS  
Middlesex

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (IF KNOWN)

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## II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   |   |   |   |         |   |
|---|---|---|---|---------|---|
| Citizen of This State                   | PTF DEF   | <input type="checkbox"/> 1 <input type="checkbox"/> 1         | Incorporated or Principal Place of Business in This State | PTF DEF | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5     |         |   |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6     |         |   |

## IV. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

ERISA, 29 U.S.C. §1001, et seq., Damages and injunctive relief from unpaid and delinquent contributions

## VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO

## VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

A/E

SIGNATURE OF ATTORNEY OF RECORD

OR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Trustees of the Painters & Allied Trades District Council No. 35 Health and Welfare, Pension and Annuity Funds v. Decor Graphics, Inc. et al.

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

— I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950.

\*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

— III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

— IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

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3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES ☐

NO ☒

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES ☐

NO ☒

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES ☐

NO ☐

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES ☐

NO ☒

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES ☒

NO ☐

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION ☒

CENTRAL DIVISION ☐

WESTERN DIVISION ☐

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION ☐

CENTRAL DIVISION ☐

WESTERN DIVISION ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Michael A. Feinberg, Esq.

ADDRESS 177 Milk Street, Boston, MA 02109

TELEPHONE NO. 617-338-1976